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GERSH KORSINSKY
APARTMENT 4B
1236 49TH STREET
BROOKLY, NY 11219

In re Application of:
Korsinsky, Gersh., et al.
Serial No. 10/672,561
Filed: September 29, 2003

Title: A USERS WATER STORAGE

DECISION ON PETITIONS
UNDER 37 CFR § 1.181

This is a decision on the petitions filed on September 15, 2006 and February 13, 2007 under 37 CFR § 1.181. Petitioners request withdrawal of the Office Actions mailed August 1, 2006 and November 30, 2006.

The petitions are dismissed.

Background

The examiner issued a Non-Final Rejection on August 17, 2004. The applicants' claims were rejected under 35 U.S.C. § 102(b) as being anticipated by McIntosh, Hanns and Toms. The applicant then filed an amendment on September 17, 2004. The examiner found the amendment to be noncompliant based on the failure of the applicant to provide a status identifier with each claim. The Notice of Noncompliant Amendment was mailed on July 8, 2005. On August 18, 2005 the applicants filed an amendment, providing status identifiers for each claim, canceling claim 1-3 and adding claims 4-12. In the final rejection, mailed August 15, 2006, the examiner rejected the claims 4-12 under 35 U.S.C. § 112 and claims 4,6,10 and 11 under 35 U.S.C. § 102(b).

On September 15, 2006, the first petition under 37 CFR §1.181 was filed. The petitioner stated, "the examiner failed to present evidence why a person skilled in the art would not recognize that the written description had possession of the claimed invention." On November 30, 2006 the examiner issued an advisory action, interpreting the September 15, 2006 petition as an amendment after a final rejection. The examiner found that the amendment "lacked discussion of any of the specifics with respect to the claim language employed" and therefore did not place the application in condition for allowance.

On February 13, 2007 a second petition was filed again requesting withdrawal of the final rejections. This petition raised various issues regarding the constitutionality and fairness of Patent and Trademark Office procedures.

Discussion

A review of the application indicates that the petitioners are challenging both the merits of the examiners rejections and the constitutionality of the procedures followed by the Patent and Trademark Office. With respect to petitions to the Director, relevant portions of 37 CFR § 1.181(a)(1) states:

- (a) Petition may be taken to the Director:
 - (1) From any action or requirement of any examiner in the ex parte prosecution of an application, or in ex parte or inter partes prosecution of a reexamination proceeding which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court

In accordance with 37 CFR §1.181(a)(1), an applicant may properly petition the Director only where the matter to be petitioned is not subject to appeal. The M.P.E.P. defines matters that are in fact subject to appeal in §1201. The relevant section of M.P.E.P § 1201 states:

The United States Patent and Trademark Office (Office) in administering the Patent Laws makes many decisions of a substantive nature which the applicant may feel deny him or her the patent protection to which he or she is entitled. The differences of opinion on such matters can be justly resolved only by prescribing and following judicial procedures. Where the differences of opinion concern the denial of patent claims because of *prior art or other patentability issues*, the questions thereby raised are said to relate to the merits, and appeal procedure within the Office and to the courts has long been provided by statute.

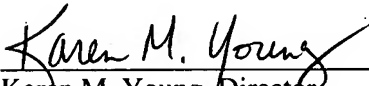
In the petition filed on September 15, 2006, the examiner's rejections under both 35 U.S.C. § 112 paragraph 1 and 35 U.S.C. § 102(b) were challenged. These challenges were based on prior art and other patentability issues which are related to the merits. According to the M.P.E.P §1201 issues regarding the merits are appealable and therefore not appropriately raised in a petition to the Director under 37 CFR §1.181(a)(1). In the petition filed on February 13, 2007, the petitioner challenges the constitutionality and fairness of the procedures followed by the USPTO. The procedures challenged by the petitioner are based upon the Constitution, the United States Code, the Code of Federal Regulations, case law and their subsequent interpretation by the court system and the USPTO. The Office does not possess the authority to modify or reinterpret these procedures. Therefore, the petitioner's challenges cannot be appropriately addressed by the current petitions.

Decision

For the foregoing reason, the relief requested by the petitioner will not be granted. The rejections under 35 U.S.C. § 112 and §102(b) as well as the petitioner's challenges to the constitutionality of the rejection of the claims are appealable matters and will therefore not be decided by petition.

The application is being forwarded to the Examiner Phillips of Art Unit 3751 for further processing. Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision, 37 CFR 1.181(f). No extension of time under 37 CFR 1.136(a) is permitted. Any reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Any inquiry regarding this decision should be directed Henry Yuen, Special Programs Examiner, at (571) 272-4856.

PETITIONS DISMISSED.



Karen M. Young, Director
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